

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**QUIKTRIP CORPORATION, and
QUIKTRIP WEST, Inc.,**

Plaintiffs,

v.

BUCKY'S EXPRESS, LLC,

Defendant.

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Case No. 8:07CV88

MEMORANDUM AND ORDER

The Plaintiffs, QuikTrip Corporation and QuikTrip West, Inc., filed a Complaint on March 1, 2007, a copy of which was provided to counsel for the Defendant, Buckey's Express, LLC, on March 2, 2007. Service of process was obtained on the Defendant on March 23, 2007. On March 16, 2007, the Plaintiffs filed and served a Combined Motion for Temporary Restraining Order and Preliminary Injunction, and a motion seeking an expedited hearing, though the Plaintiffs requested that no hearing be scheduled before March 29, 2007. (Filing Nos. 10 & 11). Plaintiffs also filed evidence that they intend to offer in support of the motion. (Filing No. 15). The Court granted the motion for an expedited hearing, scheduling the hearing for tomorrow, March 29, 2007.

The Court also granted the Plaintiffs' Motion for Leave to Present Live Testimony at the hearing (Filing No. 20), and the Defendant has filed a motion for leave to do the same (Filing No. 28), which will also be granted.

One of the witnesses whom the Plaintiffs subpoenaed is Steven J. Buchanan. Buchanan is identified in the Plaintiffs' evidentiary materials as the registered agent and manager of Buckey's Express, LLC, and he has filed a motion to quash the Plaintiffs' subpoena *ad testificandum* directing him to appear and give testimony during the March

29, 2007, hearing. In his affidavit in support of the motion to quash, Buchanan states that a close family member was admitted to the hospital on March 27, 2007, with a serious health condition that prevents his attendance at the hearing. The affidavit prepared by Buchanan's counsel states that the Defendant requested that the Plaintiffs postpone the hearing, but that request was denied.

Buchanan's presence at the hearing is desired by the parties and may benefit the Court, but because his presence in Court this week is not practicable, the motion to quash will be granted to the extent that Buchanan need not appear in this Court tomorrow. The hearing schedule for tomorrow will be postponed until Friday, April 6, 2007, at 1:30 p.m.

Nevertheless, based on the Court's review of the verified Complaint, the Plaintiffs' motion and brief, and the evidence which the Plaintiffs intend to offer at the hearing, the Court finds that the Plaintiffs are entitled to the issuance of a temporary restraining order pursuant to Fed. R. Civ. P. 65. The Court finds that the Defendant has had informal notice of the allegations in the Complaint since March 2, 2007, and that service of process on the Defendant was obtained on March 23, 2007. Based on the specific facts demonstrated by the verified Complaint, the Plaintiffs have made a persuasive showing that they possess a registered trademark in "Pumpstart" and that the Defendant has used it. This is some evidence that Plaintiffs are likely to succeed on at least a portion of their claims. The Court also finds that the Plaintiffs are likely to sustain irreparable harm before the Defendant or its representatives can be heard in opposition to the motion. The Plaintiffs have shown that there is an imminent threat of irreparable harm to their businesses' reputation and goodwill due to the Defendant's infringing conduct. I conclude that the likelihood of consumer confusion caused by the Defendant's conduct is substantial, given that the

“Pumpstart” mark and the “Pumpstart” marketing brochure that Buckey’s Express is using are nearly identical to the Plaintiffs’ registered trademark and brochure. Accordingly,

IT IS ORDERED:

1. The Plaintiffs’ Motion for Temporary Restraining Order, only, (Filing No. 10) is granted;
2. The Defendant Buckey’s Express, LLC is hereby temporarily restrained from using the “Pumpstart” name and the “Pumpstart” marketing brochures and any materials relating to that program until the hearing on the Plaintiffs’ Motion for Preliminary Injunction;
3. The Motion to Quash Subpoena (Filing No. 25) is granted as follows: Steven Buchanan need not appear in this Court on March 27, 2007, but he must appear before this Court pursuant to the subpoena on Friday April 6, 2007 at 1:30 p.m.;
4. The Defendant’s Motion for Leave to Present Live Testimony (Filing No. 28) is granted;
5. The hearing scheduled for Thursday, March 29, 2007 at 1:30 p.m. is canceled; and
6. A hearing on the Plaintiffs’ Motion for Preliminary Injunction is scheduled for Friday, April 6, 2007, to commence before the undersigned at 1:30 p.m. in Courtroom No. 2.

Dated this 28th day of March, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge